REMARKS

The Application has been carefully reviewed in light of the Office Action dated May 14, 2008 ("Office Action"). The Office Action rejects Claims 1-23. Applicants herein amend Claims 1, 2, 9-10, 15-16, and 20-23. Applicants do not admit that any amendments are necessary due to any prior art or any of the Office Action's rejections. Applicants traverse the rejections and request reconsideration and allowance of all pending claims.

Section 101 Rejections

The Office Action rejects Claims 1-14 under 35 U.S.C. 101. Applicants traverse the rejection and respectfully request reconsideration and allowance of these claims.

The Office Action asserts that Claims 1-14 are directed only to "a mental process." (Office Action; p. 8). Without acquiescing to the Office Action's assertion, Applicants note that Claim 1 has been amended to recite, in part:

> determining a number of units earned by the participant based at least in part on the positioning of the participant in the event and a purse distribution structure defining a distribution of a purse over a plurality of positions in the event, *the determination made by a processor*.

(Emphasis added). Claim 1, as amended, satisfies the requirements of 35 U.S.C. 101. Accordingly, Applicants respectfully request reconsideration and allowance of Claim 1 and its dependents.

Section 112 Rejections

The Office Action rejects Claims 1-23 under 35 U.S.C. 112, second paragraph. The Office Action asserts that these claims are indefinite. Applicants traverse the rejection and respectfully request reconsideration and allowance of Claims 1-23.

Claims 1 and 15

The Office Action asserts that the "total number of units potentially earned," as recited in Claims 1 and 15, is indefinite. Without acquiescing to this assertion, Applicants note that Claims 1 and 15 have been amended to recite the "total number of units that could be earned by a participant in a plurality of events." Claims 1 and 15, as amended, satisfy the requirements of 35 U.S.C. 112. Accordingly, Applicants respectfully request reconsideration and allowance of Claims 1 and 15 and their respective dependents.

Claims 22 and 23

The Office Action asserts that Claims 22 and 23 omit an essential step. (Office Action; p. 9). Without acquiescing to this assertion, Applicants note that Claims 22 and 23 have been amended to recite causing "the settlement payment to be paid." Claims 22 and 23, as amended, satisfy the requirements of 35 U.S.C. 112. Accordingly, Applicants respectfully request reconsideration and allowance of Claims 22 and 23.

Claims 2 and 16

With respect to Claims 2 and 16, the Office Action states: "the Examiner is unsure of what type of betting is being placed. Is it a point spread, over/under, or spread betting?" This statement is insufficient to support a rejection under 35 U.S.C. 112, second paragraph. Applicants respectfully remind the Examiner that "[b]readth of a claim is not to be equated with indefiniteness." *In re Miller*, 441 F.2d 689, 169 U.S.P.Q. 597 (CCPA 1971); M.P.E.P. 2173.04. The language of Claims 2 and 16 is clear. Accordingly, Applicants should not be required to amend these claims to further specify over/under betting, spread betting, or a combination thereof. Therefore, the rejection of Claims 2 and 16 is improper and Applicants respectfully request reconsideration and allowance of these claims.

Section 103 Rejections

Claims 1, 3-5, 9, 11-15, 20, and 22-23

The Examiner rejects Claims 1, 3-5, 9, 11-15, 20, and 22-23 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,910,965 B2 issued to Downes (hereafter "*Downes*") in view of New York Times, "Auto Racing: Winston Cup Purse Increased by Nascar" and "Horse Racing: Purse May Rise for Super Derby" (collectively "*New York Times*"). Applicants traverse the rejection and respectfully request reconsideration and allowance of Claims 1, 3-5, 9, 11-15, 20, and 22-23.

The cited references fail to support the rejection of amended Claim 1 for several reasons. First, the cited references fail to teach, suggest, or disclose "a first bet at a first quote...corresponding with a total number of units that could be earned by a participant in a plurality of events" as recited in amended Claim 1. Second, the cited references fail to teach, suggest, or disclose "for each of the plurality of events, determining a number of units earned by the participant based at least in part on the positioning of the participant in the event" as

recited in amended Claim 1. Third, the Office Action fails to provide a rational and articulated reason for combining the teachings of *Downes* and *New York Times*.

The cited references fail to teach, suggest, or disclose "a first bet at a first quote...corresponding with a total number of units that could be earned by a participant in a plurality of events" as recited in amended Claim 1. The Office Action relies on *Downes* for this element of Claim 1. (Office Action; p. 9). *Downes* generally discloses a sports wagering system. (Col. 4, ll. 2-5). The cited portion of *Downes* describes a wager on the ranking of a participant's statistics relative to the statistics of other participants. (Col. 7, l. 50 – col. 8, l. 18). For example, a bettor in *Downes* may wager "on where a particular quarterback's statistics will rank (e.g., 1st, 2nd, 3rd) compared to other quarterbacks for a given period of time." (Col. 14, ll. 14-16). Specifically, the cited portion of *Downes* states:

> For a particular wagering game, a bettor can make the various wagers with regard to participants' (e.g., athletes') performance statistics with respect to the rest of the betting field....Based upon the participants' performance, the participants may be ranked by system 200 relative to other participants. Some examples of rankings are shown below:

Finish Position	Finish Position (Reference Name)
First Place	Win
Second Place	Place
Third Place	Show
Fourth Place	Clear
Next to Last Place	Lag
Last Place	End

(Col. 7, l. 51 – col. 8, l. 8). Thus, the cited portion of *Downes* merely discloses wagering on the relative ranking of a participant's statistical performance. *Id.* Merely wagering on the relative ranking of a participant (e.g., first, second, or third) does not teach, suggest, or disclose a first quote "corresponding with a total number of units that could be earned by a participant" as recited in amended Claim 1. Therefore, the cited portion of *Downes* fails to teach, suggest, or disclose "a first bet at a first quote...corresponding with a total number of units that could be earned by a participant in a plurality of events" as recited in amended Claim 1. *New York Times* fails to cure this deficiency of *Downes*. Accordingly, the cited references fail to support the rejection of Claim 1.

Second, the cited references fail to teach, suggest, or disclose "for each of the plurality of events, determining a number of units earned by the participant based at least in part on the positioning of the participant in the event" as recited in amended Claim 1. The

Office Action relies on Downs for this element of Claim 1. (Office Action; p. 10). The cited portion of *Downes*, however, describes determining a ranking based on statistics, not "determining a number of units...based at least in part on...positioning" as recited in amended Claim 1. For example, the cited portion of *Downes* describes a wager on whether a hockey goaltender's statistical performance (e.g., saves) will be first, second, or third in comparison with the statistical performance (e.g., saves) of other goaltenders. (Col. 18, ll. 16-37). Thus, the cited portion of *Downes* discloses determining a ranking (e.g., first, second, or third) of an athlete based on statistics of the athlete. *Id.* However, determining a *ranking based on statistics* does not teach, suggest, or disclose "determining *a number of units earned by the participant based at least in part on the positioning* of the participant" as recited in amended Claim 1. Thus, *Downes* fails to teach, suggest, or disclose "for each of the plurality of events, determining a number of units earned by the participant based at least in part on the positioning of the participant in the event" as recited in amended Claim 1. *New York Times* fails to cure this deficiency of *Downes*. Accordingly, the cited references fail to support the rejection of Claim 1.

Third, the Office Action fails to provide a rational and articulated reason for combining the teachings of *Downes* and *New York Times*. "[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." *KSR Int'l Co. v. Teleflex Inc.*, -- U.S. --, 127 S.Ct. 1727, 1741 (2007). "There must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Innogenetics v. Abbott Laboratories*, 512 F.3d 1363, 1373 (Fed. Cir. 2008) (holding that expert testimony which did not identify motivation to combine references was properly excluded).

An Examiner must explicitly articulate the reasoning for combining teachings from different references. The Federal Circuit stated:

> Often, it will be necessary...to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. *To facilitate review, this analysis should be made explicit.*

KSR Int'l Co., 127 S.Ct. at 1740-41 (emphasis added). Vague and conclusory statements are insufficient to establish a reason for combining the teachings of different references. *See*

Innogenetics, 512 F.3d at 1373-74 (excluding obviousness testimony that was "vague and conclusory" regarding the motivation to combine references).

In the present case, the Office Action fails to provide any reason for combining the teachings of *Downes* and *New York Times*. The Office Action merely asserts that "it would have been obvious at the time of the invention in view of the teachings of *New York Times* for *Downes*' sports wagering system to have obviously included a purse distribution structure." (Office Action; p. 11). Thus, the Office Action merely asserts that modifying *Downes* would have been obvious. The Office Action fails to state any reason for modifying *Downes* in view of *New York Times*. Thus, the Office Action does not provide "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Innogenetics*, 512 F.3d at 1373. Therefore, the proposed combination of *Downes* and *New York Times* is improper. Because the proposed combination is improper, the rejection of Claim 1 should be withdrawn. For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of amended Claim 1.

In rejecting Claim 15, the Office Action employs the same rationale used to reject Claim 1. Accordingly, for reasons analogous to those stated above with respect to amended Claim 1, Applicants respectfully request reconsideration and allowance of amended Claim 15.

Claims 3-5, 9, 11-14, 20, and 22-23 depend from independent claims shown above to be allowable. In addition, these claims recite further elements that are not taught, suggested, or disclosed by the cited references. For at least these reasons, Applicants respectfully request reconsideration and allowance of Claims 3-5, 9, 11-14, 20, and 22-23.

Claims 2, 6-8, 10, 16-19, and 21

The Office Action rejects Claims 2, 6-8, 10, 16-19, and 21 under 36 U.S.C. 102(e) as being anticipated by *Downes* in view of *New York Times* and in further view of Official Notice. Applicants respectfully request reconsideration and allowance of Claims 2, 6-8, 10, 16-19 and 21.

Claims 2, 6-8, 10, 16-19, and 21 depend from independent claims shown above to be allowable. In addition, these claims recite elements that are not taught by *Downes*, *New York Times*, or Official Notice. For example, the proposed combination fails to teach, suggest, or disclose a first bet that "the total number of units earned by the participant will be greater than the upper index number" and "a second bet that the total number of units earned by the

participant will be less than the lower index number" as recited in Claim 2. The Office Action relies on Official Notice for this element of Claim 2. (Office Action; p. 14). In particular, the Office Action states: "[I]t is old and well known in the art of gambling that there are numerous types of betting methodologies, such as, but not limited to, point spread, over/under, spread betting, etc." *Id.* The Office Action does not provide any support for this assertion. Accordingly, Applicants traverse this assertion of Official Notice and request that the Examiner provide evidence to support this assertion. *See* 37 C.F.R. § 1.104. Even assuming for the sake of argument that "point spread, over/under, [and] spread betting" were well known, the mere existence of these methodologies does not teach, suggest, or disclose a first bet that "the total number of units earned by the participant will be greater than the upper index number" and "a second bet that the total number of units earned by the participant will be less than the lower index number" as recited in Claim 2. Accordingly, the rejection of Claim 2 is improper.

As another example, the proposed combination fails to teach, suggest, or disclose that "determining the payout for the first bet comprises multiplying the unit stake by the difference between the first quote and the total number of units earned by the participant in the plurality of events" as recited in Claim 8. The Office Action relies on Official Notice for this element of Claim 8. (Office Action; p. 15). In particular, the Office Action states: "Official Notice is taken that there are numerous types of payout methods, which are all dependent on the type of bet placed, such as money line bets, spread bets, over/under bets, etc." *Id.* The Office Action does not provide any evidence to support the Official Notice. Accordingly, Applicants traverse the Official Notice and request that the Examiner provide evidence to support the Official Notice. *See* 37 C.F.R. § 1.104. Even assuming for the sake of argument that the "numerous types of payout methods" were well known, the Office Action's vague reference to payout methods does not teach, suggest, or disclose that "determining the payout for the first bet comprises multiplying the unit stake by the difference between the first quote and the total number of units earned by the participant in the plurality of events" as recited in Claim 8. Accordingly, the rejection of Claim 8 is improper.

As yet another example, the proposed combination fails to teach, suggest, or disclose that "the second bet locks in a gain or loss associated with the first bet" as recited in Claim 10. The Office Action relies on Official Notice for this element of Claim 10. (Office Action; p. 16). In particular, the Office Action states: "[I]t is old and well known to place multiple

bets/wagers and...it is also old and well known for a gambler to cash out to prevent possible future losses or to secure current gains." *Id.* The Office Action does not provide any support for this assertion. Accordingly, Applicants traverse this assertion of Official Notice and request that the Examiner provide evidence to support this assertion. *See* 37 C.F.R. § 1.104. Even assuming for the sake of argument that cashing out "to prevent possible future losses or to secure current gains" is well known, the Office Action's description of "cashing out" does not teach, suggest, or disclose that "the second bet locks in a gain or loss associated with the first bet" as recited in Claim 10. Accordingly, the rejection of Claim 10 is improper.

For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of Claims 2, 6-8, 10, 16-19, and 21.

Conclusion

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending Claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

The Commissioner is hereby authorized to charge the $490.00 two-month extension of time fee and to charge any deficiency or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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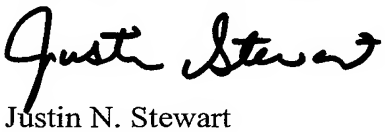

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